

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ANTHONY K. ANDERSON,

Case No. 3:13-cv-00536-MMD-VPC

Petitioner,

ORDER

v.

ISIDRO BACA, et al.,

Respondents.

This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254, by a Nevada state prisoner.

Rule 4 of the Rules Governing § 2254 Cases requires the Court to make a preliminary review of each petition for writ of habeas corpus. The Court must dismiss a petition "[i]f it plainly appears from the face of the petition . . . that the petitioner is not entitled to relief in the district court." Rule 4 of the Rules Governing 2254 Cases; see also *Hendricks v. Vasquez*, 908 F.2d 490 (9th Cir. 1990).

A federal court may only grant a petition for writ of habeas corpus if the petitioner can show that "he is in custody in violation of the Constitution" 28 U.S.C. § 2254(a). "According to traditional interpretation, the writ of habeas corpus is limited to attacks upon the legality or duration of confinement." *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979) citing *Preiser v. Rodriguez*, 411 U.S. 475, 484-86 (1973); Advisory Committee Notes to Rule 1 of the Rules Governing Section 2254 Cases. Petitioner's allegations, however, do not make such attacks. Petitioner's claims challenge the

1 conditions of his confinement, not the fact or duration of that confinement. Thus, his
2 claims are not appropriate for habeas corpus relief. Challenges to the conditions of
3 confinement are more appropriately raised in civil rights action filed pursuant to 42
4 U.S.C. § 1983. *Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991); *Crawford v. Bell*, 599
5 F.2d at 891-92 (9th Cir. 1979).

6 Pursuant to the December 1, 2009, amendment to Rule 11 of the Rules
7 Governing Section 2254 and 2255 Cases, district courts are required to rule on the
8 certificate of appealability in the order disposing of a proceeding adversely to the
9 petitioner or movant, rather than waiting for a notice of appeal and request for certificate
10 of appealability to be filed. Rule 11(a). In order to proceed with any appeal, petitioner
11 must receive a certificate of appealability. 28 U.S.C. § 2253(c)(1); Fed. R. App. P. 22;
12 9th Cir. R. 22-1; *Allen v. Ornoski*, 435 F.3d 946, 950-951 (9th Cir. 2006); see also *United*
13 *States v. Mikels*, 236 F.3d 550, 551-52 (9th Cir. 2001). Generally, a petitioner must
14 make "a substantial showing of the denial of a constitutional right" to warrant a
15 certificate of appealability. *Id.*; 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473,
16 483-84 (2000). "The petitioner must demonstrate that reasonable jurists would find the
17 district court's assessment of the constitutional claims debatable or wrong." *Id.* (quoting
18 *Slack*, 529 U.S. at 484). In order to meet this threshold inquiry, the petitioner has the
19 burden of demonstrating that the issues are debatable among jurists of reason; that a
20 court could resolve the issues differently; or that the questions are adequate to deserve
21 encouragement to proceed further. *Id.* In the instant case, no reasonable jurist would
22 find this Court's dismissal of the petition debatable or wrong. The Court therefore denies
23 petitioner a certificate of appealability.


24 It is therefore ordered that this action is dismissed with prejudice for failure to
25 state a cognizable habeas corpus claim.

26 It is further ordered that all pending motions in this action are denied.

27 It is further ordered that the Clerk of Court is directed to enter judgment
28 accordingly.

1 It is further ordered that petitioner is denied a certificate of appealability.

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3 DATED THIS 22nd day of October 2013.

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6 MIRANDA M. DU
7 UNITED STATES DISTRICT JUDGE
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